[redacted]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems	)	WT Docket No. 96-18
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

TO: The Commission

COMMENTS OF AMERITECH MOBILE SERVICES, INC. ON INTERIM LICENSING PROPOSAL

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SUMMARY

Ameritech Mobile Services, Inc. (Ameritech) supports the Commission's recognition that protections are needed for incumbent licensees during the market area licensing rulemaking. However, Ameritech has certain concerns regarding the Commission's interim licensing proposal. In particular, Ameritech requests modification of the freeze on acceptance of applications during the pendency of this rulemaking, inasmuch as it hinders incumbent licensees and is retroactive in nature. Holding in abeyance (and probably dismissing) applications which were filed in advance of the NPRM, but which have not achieved cut-off status, will only exacerbate the severe regulatory delays which have plagued the paging industry. Most of these pending applications are expansion or modification proposals filed by incumbent licensees, in response to customer demand. The Commission is on record as supporting such efforts during the pendency of the rulemaking.

Ameritech also supports an exception to the freeze for applications filed by incumbent licensees to expand their coverage within 40 miles of the existing system, or to fill-in coverage gaps that would not afford a reasonable wide-area service opportunity for the market area licensee. Such applications should be granted on a co-primary basis.

Ameritech opposes the apparent retroactive adoption of a new substantive 931 MHz interference protection standard without a rulemaking, embodied in footnote 271 of the NPRM. The Commission should clarify that it did not intend to immediately adopt the proposed standard without a notice and comment rulemaking. Otherwise, this standard has been improperly adopted, and is adverse to the public interest.

Finally, Ameritech requests that the Commission adopt a mechanism for incumbent licensees to obtain Canadian coordination when implementing additional transmitter sites above Line A, as allowed by the interim procedures.

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Ameritech Mobile Services, Inc. (Ameritech) hereby submits its comments on the interim licensing proposal set forth in the Commission's February 9, 1996 Notice of Proposal Rulemaking (NPRM) in the above-captioned matter. As discussed below, Ameritech requests modification of the freeze on acceptance of applications during the pendency of this rulemaking, inasmuch as it hinders incumbent licensees and is retroactive in nature. Ameritech also opposes the apparent retroactive adoption of a new substantive interference protection standard without a rulemaking, embodied in footnote 271 of the NPRM. Finally, Ameritech requests that the Commission adopt a mechanism for incumbent licensees to obtain Canadian coordination when implementing additional transmitter sites above Line A, as allowed by the interim procedures.

I. The Commission Should Modify the Freeze on Applications to Ensure Continued Service to the Public.

During the open meeting at which the Commission adopted this NPRM, at least two of the Commissioners openly expressed their reservations about imposing any filing

freeze, and the Chairman indicated that industry concerns about the adverse impact of a filing freeze "had been heard" by the Commission and taken into account. Nonetheless, the NPRM imposes a freeze on all applications for paging channels. Of particular concern is the Commission's decision to make the freeze retroactive. The Commission will "hold in abeyance" any application which has not achieved "cut-off" status. NPRM at ¶144.[1] If the Commission's market area licensing proposal is adopted, these applications will be dismissed. Id. Ameritech appreciates the Commission's concern that allowing the unrestricted filing of applications during the pendency of this rulemaking may have undesirable consequences, such as the filing of speculative proposals. However, it is respectfully submitted that the freeze, as currently adopted, will only exacerbate regulatory delays which have confounded the paging industry for nearly two years, without significant offsetting benefits. Therefore, the freeze is adverse to the public interest, in the absence of modifications discussed below.

A. A Retroactive Freeze Is Not Needed to Safeguard the Auction, and Hinders Bona Fide Service Improvements.

The Commission's decision to hold in abeyance applications which have not achieved cut-off status will significantly delay, and likely dismiss, hundreds of applications filed by incumbent licensees seeking to build out their paging systems.[2] This result will harm the public subscribers of such systems by delaying the provision of

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[1] Cut-off status is achieved when the relevant period for filing competing applications has expired. Id.

[2] Ameritech filed dozens of applications during the weeks prior to adoption of the NPRM, as part of the steady stream of applications it must file on a regular basis to expand and modify its paging systems in response to customer demand, budgetary considerations, site acquisition and other factors that require the gradual modification and buildout of such systems.

needed paging services in a timely fashion. The processing of 931 MHz applications has already been delayed for nearly two years, in the wake of application backlogs and the Commission's decision to develop software to process these applications. Various problems which arose during the development of this software have caused inordinate delays in the processing of 931 MHz applications, to the frustration of both the Commission and the industry. As a result, paging carriers such as Ameritech have been unable to implement additional transmitters needed to respond to customer demands for expanded coverage, eliminate holes in coverage due to unforeseeable propagation problems, or replace coverage due to the loss of an antenna site.

These regulatory delays have artificially restrained the growth of the paging industry. The retroactive freeze would only add to the red tape, contrary to the purpose of the Commission's proposal. See NPRM at ¶1. It is likely that the captioned rulemaking will take several months, and any resulting auctions may not take place for more than a year. The overriding public interest in allowing paging licensees to improve existing service to the public outweighs any benefit in further delaying, and ultimately dismissing, applications filed during the three months prior to the adoption of the NPRM.

It is well settled that the retroactive application of administrative rules and policies is looked upon with disfavor by the courts. See, e.g., Bowen v. Georgetown University Hospital, 488 U.S. 208 (1988) (Retroactively is not favored in law.); Yakima Valley Cablevision v. FCC, 794 F.2d 737, 745 (D.C. Cir. 1986) ("Courts have long hesitated to permit retroactive rulemaking and noted its troubling nature.") When implementing regulations or policies and procedures with retroactive application, the Commission must balance the "mischief" caused by such regulation against the "salutary" or

beneficial effects, if any, which reviewing courts, in turn, must critically review on appeal to ensure that competing consideration have been properly considered. Yakima Valley Cablevision, 794 F.2d at 745-46. See Securities and Exchange Commission v. Chenery, 332 U.S. 194, 203 (1947).

Against the mischief described above, there is little offsetting benefit. The Commission justifies its retroactive freeze by stating that "we believe that this approach gives the appropriate consideration to those applicants who filed applications prior to our proposed changes and whose applications are not subject to competing applications." NPRM at ¶144. However, any filings made on or before the NPRM adoption date were clearly not made in response to the NPRM, even if they have not achieved cut-off status. And to the extent that the freeze has been classified by the Commission as procedural, entities which had not yet filed in response to a pending application had no expectation of being able to avoid a prospective freeze.

This is especially true in the case of 931 MHz applicants. Because the Commission stayed the frequency-specific licensing rules for 931 MHz adopted in its Part 22 Rewrite Order,[3] no 931 MHz applicant is entitled to apply for any particular frequency.[4] Instead, the Commission is free to award 931 MHz frequencies as it sees fit, so long as frequencies are available. Thus, if Applicant B sees a Public Notice indicating that Applicant A had applied for 931.1125 MHz in Washington, D.C., Applicant B has no expectation that it will be able to file a competing application for

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[3] Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, CC Docket No. 92-115, 9 FCC Rcd 6513 (1994) ("Part 22 Rewrite Order").

[4] The Commission's rules providing for frequency specific licensing of 931 MHz channels were stayed by Order, 10 FCC Rcd 4146 (January 18, 1995) ("Part 22 Stay Order").

931.1125 MHz at any time within 60 days of the Public Notice. Rather, if there are enough available 931 MHz channels in the Washington, D.C. area, Applicant A will be given its preference of 931.1125 MHz, and Applicant B will be given a different frequency. Mutual exclusivity arises only when there are more applicants filing within a given 60-day window than there are available frequencies.

However, since the enactment of the Omnibus Budget Reconciliation Act of 1993,[5] applicants filing mutually exclusive 931 MHz proposals have been on notice that their applications will be subject to auction. Therefore, if a non-mutually exclusive application has been filed on or before the effective date of the NPRM, it should be processed to grant under the existing rules. Any applicant that would file on top of this proposal in a way that creates mutual exclusivity will have its opportunity to go to auction -- the auction to be held if the Commission adopts its market area licensing proposal.

For the lower common carrier paging bands, entities have been afforded the opportunity to file frequency-specific competing applications within 30 days of Public Notice. However, even in these frequency bands, would-be competing applicants are at best bargaining for an auction. They will still have this auction opportunity, albeit for a larger license area.

In any event, the Commission has recognized that over 70 percent of pending applications are non-mutually exclusive applications filed by incumbents seeking to modify existing systems.[6] This is to be expected of a mature industry. See id. A

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[5] Pub. L. No. 103-66, Title VI §6002(b)(2)(A), (B), 107 Stat. 312 (largely codified at 47 U.S.C. §332 et seq.).

[6] NPRM, Separate Statement of Commissioner Susan Ness, at 1.

review of the public notices of applications accepted for filing during the 60 days prior to the NPRM reveals that this trend holds true for those applications that would be derailed by the freeze.

Indeed, the courts have ruled that the Commission cannot dismiss applications which were timely filed in accordance with the rules prior to the effective date of a freeze. Such applications are entitled to consideration under the doctrine of Kessler v. FCC, 326 F.2d 673 [1 RR2d 2061] (D.C. Cir. 1963). In Kessler, the U.S. Court of Appeals for the D.C. Circuit concluded, in the context of a freeze on the acceptance of new AM broadcast applications, that applicants who tendered their applications prior to the first day of a freeze were entitled to participate in a comparative hearing on that application and that the Commission could not deprive them of this right when their applications were timely but were rejected only because of a temporary freeze. Id., 326 F.2d at 688 [1 RR2d at 2077].

Moreover, procedural fairness requires that the Commission process, in accordance with the rules, any applications for paging facilities that were on file prior to the imposition of the freeze. These applicants followed the Commission's rules, expended significant efforts and resources in the preparation of their applications, including engineering studies and legal review. Each applicant also paid a filing fee to the FCC. Dismissal of these applications would be particularly unfair to the applicants and their customers because the combination of holiday leave, government furloughs and closings due to winter weather no doubt delayed many applications from reaching public notice in a timely fashion. Therefore, the commencement of the relevant cut-off period was delayed for reasons beyond the control of the applicants.

In summary, the retroactive nature of the application freeze is adverse to the public interest, contrary to precedent and grossly unfair to the affected applicants. The freeze, if retained, should be prospective only. Moreover, it should be modified to provide for expansion and modification applications, as discussed below. If the Commission determines that its concerns about potential competing applicants are overriding, then the freeze should be lifted for such time as is necessary to allow competing proposals. If the Commission does not see fit to allow the expansion and modification applications discussed below, then the freeze should be lifted altogether.

II. The Commission Should Continue to Accept Expansion and Modification Applications from Incumbent Licensees.

The Commission correctly observes that "an across-the-board freeze could impair the ability of existing licensees to make certain necessary modifications to their systems to respond to consumer demand while the rulemaking is pending." NPRM at ¶140. The Commission seeks to mitigate the adverse affect of the freeze by immediately allowing the implementation of internal "fill-in" transmitters, so long as the composite interference contour is not exceeded. Id. However, perhaps recognizing that this measure is not adequate by itself to allow paging licensees to respond to customer demand, the Commission requests comment on whether it should allow incumbent licensees to file applications that would expand or modify their existing systems beyond the interference contours. Id. at ¶143. Ameritech wholeheartedly endorses this proposal. However, certain expansion and modification applications should be granted on a co-primary basis, rather than receiving secondary status as proposed.

Paging systems are dynamic in nature, requiring constant modification to respond to customer demand, building penetration problems, loss of antenna sites, and other

unforeseeable circumstances. It is vital that paging licensees be able to promptly and effectively add to or modify their systems in response to these exigencies. Otherwise, public subscribers suffer a degradation of service. Commissioner Chong has emphasized that the Commission should "not inadvertently hinder the ability of paging carriers to either compete or continue to expand their businesses."[7] Unfortunately, a proposal to allow secondary operation does not completely implement this intent.

Because the eventual auction winner will be able to summarily force such secondary transmitters to cease operating, incumbent carriers will be put in a position of offering a needed service expansion or building penetration improvement to a hospital or other public subscriber, only to have to degrade this service in a matter of months. The Commission has consistently found that the public interest is best served by avoiding any such loss of service to existing customers. See e.g., Memorandum Opinion and Order on Reconsideration, Pacific Bell, Mimeo No. 3574, released April 4, 1986 (Special temporary authority extended despite licensee's failure to file extension request, "because of the compelling public interest in maintaining the quality of service to existing subscribers."); Otis L. Hale d/b/a Mobilefone Communications, 2 FCC Rcd 2141 (1987) (Licensee found unfit to hold licenses is allowed to continue operating stations until successor licensee is in place, to avoid disruption of existing service to the public.)

The interruption of service over secondary sites would be particularly harmful in the wake of the regulatory delays which the paging industry has suffered, as discussed above. Many paging customers are at their breaking point waiting for promised improvements in coverage, only to learn that the regulatory process has delayed such improvements for months. If carriers were to finally implement coverage changes in a

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[7] NPRM, Separate Statement of Commissioner Rachelle B. Chong, at 2.

more responsive manner, and then withdraw this coverage, public confidence in the paging industry would be further undermined. This will discourage reliance upon wireless services in general, to the detriment of the public and the industry.

During the captioned rulemaking, Ameritech recommends that two types of applications be granted on a co-primary basis: (1) applications for additional sites on an incumbent's licensed frequency, so long as each additional site is located within 40 miles of one of the incumbent's previously authorized transmitter sites;[8] and (2) applications for additional transmitter sites on the incumbent's licensed frequency, where the area to be served by the additional site is surrounded by the incumbent's authorized co-channel transmitters within 70 miles, forming a "pocket" around the proposed site. The former applications allow incumbents a reasonable area of growth, to satisfy immediate customer demand. The latter applications would recognize that, where an incumbent has existing sites that largely encompass a given area, it better serves the public interest to allow the incumbent to serve the resulting "hole" in the coverage, rather than allowing the auction winner to establish one or two lower-powered sites. The auction winner, having to protect the incumbent's surrounding sites, would be able to provide only minimal coverage at best. In contrast, the incumbent could provide continuous coverage throughout the area. Since the purpose of the market area licensing proposal is to encourage wide-area service, NPRM at ¶¶ 20-21, the auction winner would gain little by being able to fill-in these gaps. Unfortunately, allowing the winner to establish

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[8] In order to prevent "creeping" system expansion, the additional site would have to be located within 40 miles of a transmitter which is either already licensed, or which will be licensed pursuant to the processing of backlogged applications which will be taking place in the immediate future. See, e.g. Public Notice, Mimeo No. DA96-219, "FCC Complete First Run of Its New Software for the Processing of 931 MHz Paging Applications," released February 22, 1996.

facilities under these circumstances would be an open invitation for unscrupulous auction licensees to undermine the service provided by the incumbent, in order to drive it off of the channel.

III. The Commission Should Eliminate Its Apparent Retroactive Change to 900 MHz Interference Protection Standards.

The NPRM proposes a new method of calculating interference protection to be accorded by the market area license winner to incumbent co-channel licensees in the 931 MHz band. NPRM at ¶52. The current rules protect an assumed service area that is generally 20 miles, based on an assumed interference contour that is generally 50 miles (for a minimum mileage separation that is typically 70 miles). However, the formulae set forth in paragraph 52 for calculating the protected service area and the interference contour would result in co-channel licensees being able to establish facilities much closer than the previous 70 mile separation.[9] Comment is requested on using this new standard prospectively, to govern protection to incumbents after market area auctions are completed. NPRM at ¶53. However, footnote 271 of the NPRM would appear to immediately and retroactively apply the new interference contour formula to permissive modifications and fill-in transmitters. If this result was not intended by the Commission, a clarification should be issued immediately. If the Commission does intend to

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[9] The formula for interference contours uses a median field strength of 21 dBuV/m, while the service area formula uses a median field strength of 47 dBuV/m. The curves attached to the NPRM as Appendices B and C indicate that, for stations operating at an antenna height above average terrain (HAAT) of 100 feet (which is not unusual for paging operations), with an effective radiated power of 1000 watts, the protected service area shrinks from 20 miles to 4.9 miles; and the interference contour shrinks from 50 miles to a mere 20.9 miles. Even at a more typical HAAT of 200 feet, the service area is reduced to 7.5 miles and the interference contour is only 27.1 miles. Thus, the new formulae produce a drastically smaller separation between potentially interfering operations.

retroactively apply the new formula without a rulemaking, it is respectfully submitted that such action would violate applicable statutes and would be adverse to the public interest.

Paragraph 140 of the NPRM seeks to establish protections for incumbent licensees during the pendency of the rulemaking. As discussed above, one of these protections is the immediate right of incumbents to establish "fill-in" transmitters that may include new service area, "provided that such additions or modifications do not expand the interference contour of the incumbent's existing system." Id. This sentence is modified by footnote 271, which states that "[t]he interference contour is based on a median field strength of 21 dBuV/m. See ¶52, supra." Thus, this footnote defines the interference contour to be immediately used for implementing "fill-in" transmitters by applying the new formula which is currently only a proposal by the Commission for future protection of incumbents. Moreover, the next sentence of paragraph 140 suggests that the new formula will immediately replace incumbents' rights to modify their stations as allowed by Sections 22.163 and 22.165 of the Commission's Rules:

> Under our current Part 22 rules, such additions or modifications are allowed by common carrier paging licensees without prior Commission approval if the added site is within both existing service and interference contours. [footnote omitted] We find that the public interest is served by continuing to allow such modifications because they will give incumbents the flexibility to make internal site modifications without affecting spectrum availability to others. We also believe that it serves the public interest to exempt incumbents from the requirement that the service area not be modified so long as the licensee's interference contour is maintained. Using the interference contour as the sole basis for modification provides the same protection to other licensees as our current rules but provides a simpler analysis of determining permissible modifications.

NPRM at ¶140 (emphasis added). The above language implies that the Commission is viewing the new "fill-in" rule (which apparently incorporates the new interference

contour formula) as a substitute for implementing permissive modifications and fill-in transmitters under the existing rules. Again, if this is not intended, the Commission should so clarify.

Otherwise, Ameritech opposes the use of the new contour formula for purposes of determining whether a fill-in transmitter can be implemented under the interim licensing policy (including fill-ins that encompass new service area). As described above, the new formula significantly reduces the protection to which an incumbent licensee is entitled. Thus, the above-quoted language from the NPRM is inaccurate in stating that the interim fill-in rule "provides the same protection to other licensees as our current rules...." Paging licensees have planned their systems based on the existing, properly adopted rules, and it would be grossly unfair to now alter the protection afforded to these carriers and their customers, at a time when they are unable to file applications to replace the resulting lost coverage on the exterior of their systems. Therefore, the new formula should be adopted neither for interim system modification nor for permanent interference protection purposes.

Greater concerns arise if the Commission intends to immediately apply the new formula to permissive modifications and fill-in transmitters which do not incorporate new service area, i.e., which are implemented as allowed by the current rules. Such action would constitute a rule change without a notice and comment rulemaking proceeding, in violation of applicable statutes.

The Administrative Procedure Act establishes a procedure which must be followed in order for substantive agency rule changes to be given force of law. See, 5 U.S.C. §553 (1995). Unless prescribed procedures are followed, agency or administrative rules have not been legally issued, and are consequently ineffective.

A. The Commission's Proposed Contour Formula Is Not Procedural.

The distinction between a substantive rule (which must be promulgated in accordance with the APA's notice and comment requirements) and a procedural rule (which need not comply with such notice and comment) is frequently raised in the context of administrative law. The U.S. Court of Appeals for the District of Columbia Circuit made this distinction in the context of a Commission Freeze Order in Kessler v. FCC, 326 F.2d 673 [1 RR2d 2061] (1963). Quoting from a Commission Order, the Court noted:

> "Substantive rules are those which change standards of station assignments and procedural rules are those dealing with the method of operation utilized by the Commission in the dispatch of its business."

Id., 326 F.2d at 680 [1 RR2d at 2068]. For most paging licensees operating at 931 MHz, the new 21 dBuV/m measure of a licensee's protected interference contour is a reduction from the interference radius afforded under the current rules. See Rule Section 22.537. It is hard to imagine a rule that could be more substantive than one which defines the boundaries of a licensee's service and interference contours. This rule clearly changes the "standards of station assignments," since it affects how close two transmitters can be located.

Moreover, the Commission itself recognizes that this new definition is a substantive rule because it has *requested comment* on its proposal to redefine the 931 MHz interference contour as 21 dBuV/m, at paragraphs 52 and 53 of the NPRM.

As a substantive rule, the new definition of a 931 MHz paging licensee's interference contour cannot have the force of law unless and until it is promulgated in accordance with the notice and comment requirements of the APA. Using a proposal

to define the area within which a 931 MHz licensee may add sites to an existing system or modify its existing sites is tantamount to giving this substantive rule immediate effect, and arguably deleting Rule Sections 22.163 and 22.165 from the Code of Federal Regulations. Therefore, to the extent that the Commission intends to use the proposed contour formula to restrict the rights of 931 MHz licensees to do what they might otherwise have done under the existing rules, a reviewing court would find the Commission's actions to be unlawful and unenforceable.

B. The Adoption of the New Formula Would Constitute an Improper Modification of a License Under Section 316.

The Commission's "redefinition" of a 931 MHz licensee's interference contour is, by its very nature, a modification of its license. Part 22 paging authorizations incorporate the engineering contained in an applications being granted and the substantive terms of the relevant rules into the terms of a license. These rules define a licensee's authority to operate, and to implement any permissive modifications. The Commission has confirmed that its rules are incorporated into the terms of an FCC license. See e.g. Emerald B/casting Corp., 5 RR2d 151 (1965) (new rules incorporated into license when renewal was granted). Therefore, the modification of the rules which define a 931 MHz licensee's interference contour is a modification of its license.

Section 316 of the Communications Act of 1934 (as modified) (the "Act") requires the Commission to provide a licensee with notice and a hearing *prior* to the modification of its license. Section 316 states, in relevant part:

> (a) Any station license... may be modified by the Commission... if in the judgment of the Commission such action will promote the public interest, convenience, and necessity... No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefore, and

> shall have been given reasonable opportunity, in no event less than thirty days, to show cause by public hearing, if requested, why such order of modification should not issue.

As demonstrated above, using the 21 dBuV/m proposal to define a 931 MHz interference contour would clearly modify the terms of a 931 MHz license. By giving this new definition immediate effect, the Commission appears to be violating Section 316 of the Act. 931 MHz paging licensees would be unable to add new transmitters to their systems, or modify existing transmitters, in accordance with the rules in effect when they designed and began to construct their systems.

C. To Change the Rules Mid-Stream Is Unfair.

As described above, many 931 MHz paging licensees have had applications pending for more than one year. Out of desperation, many 931 MHz applicants have constructed their systems in advance (as allowed under Rule Section 22.143), so that they would be in a position to place the station on the air as soon the public notice granting the application is issued. This pre-grant construction often incorporates permissive modifications which appear to be necessary or desirable for improved service, as allowed under the Commission's Rules defining the service and interference contours based on assumed mileage criteria. Among these permissive modifications are the installation of higher-powered transmitters and new antenna systems, in order to provide a more reliable signal with better building penetration. So long as the station class (as defined in Rule Section 22.502) is not changed, these modifications can be implemented on a notification basis, since the service and interference contours do not change.[10]

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[10] Prior to the Part 22 Rewrite Order, 931 MHz applicants could not apply for more than 1000 watts ERP, but upon grant could increase their power up to 3500 watts ERP as a permissive modification (provided there was no change in station class). See former Rule Sections 22.502(c), 22.505(b) and 22.535(a). Many of the 1994 applications which

Applying the new formula at this point would strand the significant resources 931 MHz licensees have expended in the design and construction of their paging operations, and further delay the provision of reliable service to the public.

IV. The Commission Should Create a Canadian Clearance Mechanism for UHF and VHF Bands.

The NPRM discusses whether the auction rules should be modified to reflect the diminished value of MTAs which include territory above Line A, and concludes that no such modifications are necessary. Id. at ¶¶ 63-64. However, the NPRM does not discuss how incumbent licensees and eventual auction winners for these MTAs are to obtain Canadian clearance for new sites in the VHF and UHF bands, either during the pendency of the rulemaking, or afterward. 931 MHz facilities no longer require Canadian coordination, due to treaty arrangements dividing these frequencies between the two countries. However, the lower common carrier paging bands still require site-by-site coordination. Currently, the Commission obtains clearance for such sites from the Canadian Department of Communications, as part of the application process. However, licensees seeking to implement transmitters which are within their composite interference contour and above Line A will no longer be filing applications for Commission approval.

Thus, without a substitute coordination mechanism, these carriers will be unable to establish fill-in transmitters within the composite interference contour, as contemplated by the NPRM. This will exacerbate the harmful effect of the freeze. Therefore, the Commission should immediately establish a procedure whereby licensees can obtain

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are only now being processed by the Commission were limited to requesting 1000 watts ERP under the old rules.

coordination directly from the Canadian Department of Communications or through the Commission.[11]. Otherwise, VHF and UHF paging licensees with systems above Line A will be unable to respond to customer demands now or in the future. Similar concerns may exist for licensees near the Mexican border.

CONCLUSION

The Commission properly recognizes the need to protect the rights of incumbent licensees, to ensure that they can continue to provide vital services to the public. As discussed above, certain modifications to the proposed interim licensing rules are needed to ensure that these services are not jeopardized during the pendency of the rulemaking.

Respectfully submitted,

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[11] Obtaining clearances directly from Canadian authorities may speed service to the public. The Commission has similarly allowed licenses to obtain antenna structure clearances directly from the Federal Aviation Administration.